

## Message Text

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10

ACTION IO-13

INFO OCT-01 ADP-00 CIAE-00 DODE-00 PM-09 H-02 INR-10 L-03

NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SS-15 USIA-12

AF-10 ARA-11 EA-11 EUR-25 NEA-10 ACDA-19 GAC-01 RSR-01

/168 W

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P 100925 Z MAY 73

FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 9231

INFO USMISSION USUN NY PRIORITY

C O N F I D E N T I A L GENEVA 2179

E. O. 11652: GDS

TAGS: PFOR, UN

SUBJ: DEFINITION OF AGGRESSION COMMITTEE: PRIORITY AND  
AGGRESSIVE INTENT

1. IN LIGHT OF MAY 9 MEETING OF GROUP III DEALING WITH  
PROBLEM OF PRIORITY AND INTENT, DELEGATION HAS GIVEN SOME  
THOUGHT TO WAYS IN WHICH " PRESUMPTION" CONCEPT RE PRIORITY  
PRINCIPLE MIGHT BE FORMULATED TO AVOID AUTOMATICITY OF  
PROCEDURAL NOTION OF PRESUMPTION. ONE APPROACH WHICH  
HAS OCCURRED TO US IS REFLECTED IN FOLLOWING  
REDRAFT OF ALTERNATIVE 2 OF 1972 WG REPORT ( P. 16):

QUOTE: WITHOUT PREJUDICE TO THE POWER OF THE SECURITY  
COUNCIL UNDER CHAPTER VII OF THE UNITED NATIONS CHARTER,  
TO TAKE INTO ACCOUNT OTHER RELEVANT CIRCUMSTANCES OF  
EACH PARTICULAR CASE IN DETERMINING THE EXISTENCE OF ANY  
ACT OF AGGRESSION, DUE REGARD SHALL BE GIVEN  
( A) TO THE NORMAL PRESUMPTION THAT THE STATE WHICH FIRST  
RESORTS TO THE USE OF FORCE MUST SHOW WHY ITS ACT SHOULD  
NOT BE CONSIDERED AN ACT OF AGGRESSION, AND

( B) TO THE QUESTION WHETHER SUCH USE OF FORCE WAS CARRIED  
OUT WITH ANY OF THE FOLLOWING PURPOSES: ( A), ( B), ETC.

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END QUOTE.

2. ADVANTAGES WE SEE IN THIS FORMULA ARE THE FOLLOWING:

A) IT WOULD MEET WIDELY- FELT NEED FOR INCLUSION OF CONCEPT OF " PRESUMPTION" BUT

B) BY GIVING " DUE REGARD" TO " NORMAL", IE NATURAL OR ORDINARY, PRESUMPTION, FORMULA CASTS LATTER IN FORM OF JUDGMENTAL FACTOR TO BE TAKEN INTO ACCOUNT RATHER THAN PROCEDURAL RULE, AND

C) BY USE OF WORD " SHOW" ( OR POSSIBLY " EXPLAIN" OR " DEMONSTRATE") FORMULA WOULD STATE PRESUMPTION IN TERMS OF BURDEN OF GOING FORWARD WITH THE EVIDENCE AS OPPOSED TO BURDEN OF PERSUASION. IN OTHER WORDS, ONCE FIRST STATE TO USE FORCE HAS OFFERED EXPLANATION, SECURITY COUNCIL PROCEEDS TO CONSIDER ENTIRE SITUATION ON MERITS WITHOUT ASSIGNING BURDEN OF PERSUASION TO EITHER SIDE.

3. WOULD APPRECIATE DEPARTMENT' S COMMENTS FOR AM MAY 11 CONTACT GROUP MEETING. BASSIN

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NMAFVVZCZ

\*\*\* Current Handling Restrictions \*\*\* n/a

\*\*\* Current Classification \*\*\* CONFIDENTIAL

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** PFOR  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 10 MAY 1973  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** thigpegh  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
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**Subject:** DEFINITION OF AGGRESSION COMMITTEE: PRIORITY AND AGGRESSIVE INTENT  
**TAGS:** PFOR, UN  
**To:** IO  
SECSTATE WASHDC  
USUN NEW YORK  
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